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1
2 VIRGINIA:

3 IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

4 JOHN MARSHALL COURTS BUILDING

5 -----x
6 PHILIP MORRIS COMPANIES, INC., et al.,

7 Plaintiffs,

At Law No.
760CL94X
00816-00

8 -against-

9 AMERICAN BROADCASTING COMPANIES,
10 INC., et al.,

Defendants.
-----x

11 May 18, 1995
12 10:00 a.m.

13 Videotaped deposition of CLARE C. PURCELL,
14 taken by Defendants, pursuant to notice, at the
15 offices of Woods Battle & Boothe, Esqs., 901 East
16 Cary Street, Richmond, Virginia before Gail F.
17 Schorr, a Certified Shorthand Reporter and Notary
18 Public within and for the State of New York
19
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25



MANHATTAN
REPORTING CORP

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1
2 A P P E A R A N C E S:3
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Attorneys for Plaintiffs
5 51 West 52nd Street
6 New York, New York 10019-66187 BY: DAVID MURPHY, ESQ.,
of Counsel.

8 - AND -

9 HUNTON & WILLIAMS, ESQS.
Riverfront Plaza, East Tower
10 951 East Byrd Street
11 Richmond, Virginia 2321912 BY: LONNIE D. NUNLEY, III, ESQ.,
of Counsel.13
14 WILMER CUTLER & PICKERING, ESQS.
Attorneys for Defendant AMERICAN
15 BROADCASTING COMPANIES
2445 M Street, N.W.
16 Washington, D.C. 20037-142017 BY: JOHN PAYTON, ESQ.,
18 ALEX ROGERS, ESQ.,
-and-
19 CRAIG GOLDBLATT, ESQ.,
of Counsel.

20 ALSO PRESENT:

21 SHELLY SANDERS, Videographer
22 Action Legal Video, Inc.
23
24
25

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ERRATA SHEET

Corrections or changes to the deposition testimony of:

Clare C. Purcell - Volume 1

Page	Line	Correction
8	16	Add "was" before "handling document"
45	22	Change ", facility" to "warehouse"
45	23	Add "Did Phillip Morris search its Carlstadt facility..." before "for"
53	18	Change "in legal" to "attorney"
53	18	Insert "attorney" between "individual" and "in"
56	10	Change "else" to "also"
60	5	Change "L-I-G-E-T-T" to "L-I-G-G-E-T-T"
75	23	Delete "?" after appendix
77	2	Change "policy" to "process"
77	17	Insert "with" between "everyone" and "in"
78	23	Insert "of" between "idea" and "what"
104	25	Change "as I read" to "and I read"
142	20	Add "who" between "know" and "made"
156	6	Change "Chris" to Charles"
159	25	Change "And" to "When"
162	25	Insert "6th" between "April" and "1994"
164	13	@ "retained." end [A:], then, starting @ "and is the procedure" begin "Q:"
168	20	Change "4:56:56" to "4:56:26"

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Clare C. Purcell

1
2 THE VIDEO OPERATOR: This is the video
3 operator speaking, Shelly Sanders, of Action Legal
4 Video, Incorporated, 132 Nassau Street, New York,
5 New York. We are here on this day, the 18th day of
6 May, 1995, at the time continuously recorded on the
7 videotape, at the offices of McGuire Woods Battle &
8 Boothe, 901 East Cary Street, Richmond, Virginia,
9 to take the videotaped deposition of Ms. Clare
10 Purcell, on behalf of the defendants, in the matter
11 of Philip Morris Companies, Incorporated, et al.,
12 versus American Broadcasting Companies,
13 Incorporated, et al., in the Circuit Court for the
14 City of Richmond, Virginia, John Marshall Courts
15 Building, At Law Number 760C194X00816-00.

16 Will counsel please introduce
17 themselves. The witness may be sworn.

18 MR. PAYTON: John Payton, for
19 defendants ABC, John Martin and Walt Bogdanich.

20 MR. ROGERS: Alex Rogers, for
21 defendants American Broadcasting Companies,
22 Incorporated, John Martin and Walt Bogdanich.

23 MR. GOLDBLATT: Craig Goldblatt for
24 defendants American Broadcasting Companies
25 Incorporated, John Martin and Walt Bogdanich.

1 Purcell

2 were not searched for documents in this case if the
3 basis of her knowledge would be from counsel in
4 this case?

5 MR. NUNLEY: If it's solely from
6 counsel in the case?

7 MR. PAYTON: If it's solely from
8 counsel in the case?

9 MR. NUNLEY: I mean I don't think so.
10 I think I have to hear the question. For example,
11 the witness has told you she's reviewed the
12 production logs. If you want to go through the
13 production logs and show you, all right, this
14 person's files were produced, then a search must
15 have been made of this facility. This person's
16 files were produced, then, you know, we can do
17 that.

18 Q. Did you review production logs or
19 production letters? Do you know the difference?

20 A. I reviewed the letters from Mr. Nunley
21 between January and April and I believe there was a
22 log or a listing attached to most of those.

23 Q. And did you review the logs or did you
24 just look at the letters?

25 A. I skimmed the logs ~~as~~^{as} I read the

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letters.

Q. And on the basis of reviewing those logs and reviewing those letters, whatever amount of time you spent on that, do you know whether or not there were searches done at the various Philip Morris Richmond facilities for documents?

A. There were productions made from Park 500, from the operations center and from R&D.

Q. That's it?

A. There may be more, but I can tell that much and I recall that much from those letters and those logs.

Q. What about the blended leaf facility, do you know what that is?

A. I'm not personally familiar with it.

Q. You don't recall if you saw any transmittal letter or production letter or production log that indicated that there were documents produced from the blended leaf facility?

A. I don't recall.

Q. What about the leaf processing facility?

A. I don't recall, sir.

Q. And what about Bermuda 100, do you know

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what that is?

A. I don't think I know exactly what that is.

Q. Okay. And so I take it you don't remember whether you saw anything that indicated documents had been produced from there?

A. I don't recall seeing that on any of the logs or letters.

Q. The flavor center, do you know what that is?

A. Yes, sir.

Q. What is it?

A. It's the location within the company that deals with flavors used in the manufacture of cigarettes.

Q. Here in Richmond?

A. Yes, sir.

Q. Okay. Did you see any indication on any of the documents you reviewed in preparation for this deposition that the flavor center was searched?

A. Yes, sir.

Q. What do you recall?

A. I recall the letter, I believe it was

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1 Purcell

2 dated April 10th, that accompanied 25 boxes of some
3 of the most commercially sensitive information.

4 Q. Okay. Is that the only indication you
5 remember that documents were produced from the
6 flavor center?

7 A. That's the only one I recall.

8 MR. NUNLEY: John, for the record, you
9 know as well as anybody, perhaps better than most,
10 that the production in this case and the logs we're
11 talking about probably run to over 60, 70 pages and
12 the logs themselves may have as many as 20, 25
13 entries on each page. I think that it's
14 appropriate to point that out for purposes of the
15 record if you're asking the witness to recall
16 them. If you have the logs and want to put them in
17 front of her and ask her questions about that, then
18 if that's how you want to spend your time I think
19 that's appropriate. But I don't think it's
20 appropriate to expect the witness to recall that
21 type of detail in a production of this size.

22 MR. MURPHY: I would just add, John,
23 that the witness has testified that she did not
24 review all of the logs that accompanied all
25 productions. So if you would like to have her do

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Purcell

that, I think that you should put them before her.

Q. Do you recall which logs or can you identify which logs you did review?

A. I reviewed letters from Mr. Nunley dated between January and April and any logs that were attached to them.

Q. Are you going to recognize the production letters that you reviewed if I show them to you?

A. I would probably recognize them. I don't know if I would be able to tell you if any were missing.

MR. PAYTON: I'm certainly willing to put in front of her what it is she reviewed, Chip. I don't know exactly how to recreate it. Do you know what it is she reviewed? I'll just pull them out and give them to her.

MR. NUNLEY: The production logs and the letters.

MR. PAYTON: Did she review all of the production logs? She didn't. All I'm saying is if you can tell me what they are I'll let her look at them. I have no problem with the procedure you described, but I don't know what it is she looked

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1 Purcell

2 at.

3 Q. Why don't you just go through and tell
4 me what it is you've got.

5 A. You'd like me to list the date of each
6 letter?

7 Q. Yes.

8 A. This is a letter to Mr. Timothy P. Fox.

9 Q. That's the January 11th?

10 A. From Mr. Nunley, dated January 11th,
11 1995. This is another from Mr. Nunley to Mr. Fox
12 dated January 11th, 1995, from Mr. Nunley to
13 Mr. Broaddus and Witten dated January 20th, from
14 Mr. Nunley to Mr. Spahn dated January 25th, 1995.

15 Would you like me to continue?

16 Q. No, I think you can stop if you just
17 give me a second.

18 MR. PAYTON: I appreciate that, Chip.
19 Tell you what I'd like to do, I'd like to mark that
20 as simply an exhibit in the deposition. No
21 objection, I take it?

22 MR. NUNLEY: No objection.

23 MR. MURPHY: No objection.

24 MR. PAYTON: Let's mark it as four.

25 And it is --

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1 Purcell

2 MR. NUNLEY: John, let me just tell
3 you -- get myself remiked here. John, let me just
4 tell you I believe towards the end some of these
5 may have trademark protection on them for purposes
6 of the appropriate handling of the deposition
7 transcript.

8 MR. PAYTON: Let's go off the record
9 for a second.

10 THE VIDEO OPERATOR: We're going off
11 the record. The time on the screen is 2:15:00.

12 (Discussion off the record.)

13 THE VIDEO OPERATOR: We're back on the
14 record. The time on the screen is 2:16:20.

15 Q. Mrs. Purcell, the document that's been
16 marked as four is the collection of letters and
17 attached logs that you reviewed in preparation for
18 your deposition here today, and in addition to
19 that, you also reviewed a letter that is dated
20 April 10 which is a transmittal letter that
21 describes some documents that were produced in this
22 case; isn't that correct?

23 A. That's correct.

24 MR. NUNLEY: John, let me just say that
25 I did this as a convenience. I don't accept it as

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Purcell

an obligation to produce it to you, making this available for purposes of the deposition.

MR. PAYTON: Yes, and I appreciate you making them available. I understand what you're saying.

Q. Why don't you take a look through the exhibit to see if it refreshes your recollection in any way as to whether or not any documents were produced from Cabarrus, North Carolina facility. And while you're looking, let me tell you that I'm going to ask you also a question about any document being produced from Louisville, the same question.

Did you review any documents that indicate that the Philip Morris facility in Cabarrus, North Carolina was searched?

A. I did not see either the Louisville or the Cabarrus locations indicated on any of the attached exhibits.

Q. Do you recall if you saw anything that indicated that Ashland, Virginia, the Ashland, Virginia facility was searched?

A. In this exhibit?

Q. Yes.

A. I did not.

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Purcell

Q. Do you know what the cigarette testing services division is?

A. I'm familiar with the function. I'm not sure if I'm relating it to the right name.

Q. A facility in Richmond?

A. The Philip Morris facility?

Q. Yes, the Philip Morris facility in Richmond?

A. I'm familiar with a function performed at the operation center.

Q. So you aren't aware of any information that specifically relates to whether or not it was searched?

MR. NUNLEY: Well, John, just so we're clear, I could say are you representing that there is a cigarette test services division. I won't say that. I'll tell you I'm not familiar with that specific terminology. I think that's what may be holding the witness up.

Q. How about the nicotine water laboratory, do you know what that is?

A. No, I don't.

Q. A Philip Morris unit, nicotine water laboratory?

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A. I've never heard that term, sir.

MR. PAYTON: Chip, I got the chemical laboratory -- I mean the cigarette testing services division from a Philip Morris document. It may have a new name today.

MR. NUNLEY: I'll just tell you I've become somewhat familiar with the company in the course of this case and I've never heard of that, that terminology. I've never heard of the nicotine water lab either.

Q. The wet chemistry laboratory, the nicotine water laboratory, the gas chromatography laboratory and the special smoking laboratory mean anything to you?

MR. NUNLEY: Object as to form.

A. I haven't heard those names used that way, sir.

Q. Well let me tell you what I have. I have a brief, a Philip Morris brief, Hunton & Williams, you know, I don't think I want to get this other litigation into this, but it's simply --

MR. NUNLEY: What's the date of the brief?

MR. PAYTON: '92. Must not be '92. It

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1 Purcell

2 must be '94. '95. February '95. And it refers to
3 employee --

4 MR. NUNLEY: Can I see the brief?

5 MR. PAYTON: Yes. What I was reading
6 from was the bottom of that page I opened it to.

7 MR. NUNLEY: I see the brief. It
8 doesn't change my answer. I've never heard of it.
9 John, I'll just tell you again, I don't want you to
10 think Ms. Purcell -- Mrs. Purcell is being
11 evasive. I don't want want you to think I'm trying
12 to mislead you. If there are other -- there may be
13 another name for what you're thinking of and I
14 don't know. If you've got the org charts, I don't
15 know.

16 MR. MURPHY: Also, I mean we should say
17 I don't know if Chip or I or Mrs. Purcell know the
18 names of every laboratory within Richmond R&D or
19 within Richmond. I mean by what they're called or
20 by any other name.

21 MR. PAYTON: Listen, folks, I accept
22 all that. I'm simply saying there seems to be a
23 reference to something that I'd say certainly must
24 exist, looks like exists today, that looks like it
25 would be a good place to look for documents and

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Purcell

maybe, you know, you're not familiar with it, you're not familiar with it, I'm not familiar with it. But the cigarette testing services division certainly seems to exist, it certainly seems to be a place where we would expect to find some sort of documents. Maybe it was searched.

Q. I'm just asking if you know. You don't know, right?

A. I don't know because of the name. If that's the facility that does some testing for cigarettes that's located in the operations center, I think I've already testified that the operations center was searched for responsive documents.

Q. Your understanding is from these documents that three, you're aware of three or four things that were searched, or maybe that's as far as we got. Park 500, R&D, operations center and flavor center?

A. Yes, sir.

Q. In Richmond. I'm just going to keep going because I think you may recognize other operations in the Richmond complex. Are you familiar with pilot plant facilities?

A. I am familiar with the term.

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Purcell

Q. The term refers to some Philip Morris facilities in the Richmond area?

A. I believe so, yes.

Q. Do you know if the pilot plant facilities were searched for documents?

A. I don't see that location specifically listed, although I could check through them again. Would you like me to?

Q. Let me keep going and then I'll let you check through them for more than one.

A. Okay.

Q. What about the Stockton Street manufacturing complex?

A. I don't recall seeing that name listed here.

Q. Direct materials warehouse?

A. I don't recall seeing them listed here, but if we refer to the April 10th letter, I believe there's some information in that that would indicate that that location was searched.

Q. Okay. In the packet of materials that is included in Exhibit number 4 you don't believe there's a reference to direct materials warehouse, but in the April 10 letter which is not included in

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1 Purcell

2 there, there is a reference to direct materials
3 warehouse?

4 A. There is a reference to documents which
5 most likely were located at that location.

6 Q. Do you want to take a look through and
7 see if you find I think it's pilot plant
8 facilities.

9 A. Pilot plant and Stockton Street you'd
10 like me to look for?

11 Q. That's right, yes.

12 A. I don't see the Stockton Street or
13 pilot plant specifically listed as a location.
14 There is, however, one group referred to as the 110
15 document group that may contain documents from
16 locations not specifically listed. It is in the
17 letter dated March 27th.

18 MR. PAYTON: Can we stipulate that it
19 doesn't mean that?

20 MR. NUNLEY: I think that's accurate.

21 Q. Are there any references in any of
22 those documents you have in front of you in Exhibit
23 4 that indicate that documents were produced from
24 any of the foreign laboratories that you described,
25 the Belgium, Swiss, German laboratory?

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1 Purcell

2 A. I did not see those locations listed.

3 MR. NUNLEY: John, so the record is
4 clear on that point, I know you know this, but
5 there are additional production logs other than
6 those.

7 MR. PAYTON: I do know that.

8 MR. NUNLEY: Okay.

9 Q. In fact, there are production logs and
10 letters that came out of New York and I take it
11 that you did not review any of those letters or
12 those logs; is that correct?

13 A. That's correct.

14 Q. Do you know why you didn't see those?

15 A. No, sir.

16 Q. What about documents that came from
17 Shook Hardy, a law firm which you said you're
18 familiar with, do any of those logs or production
19 letters indicate that any documents were produced
20 from Shook Hardy?

21 MR. NUNLEY: Object to the form and to
22 the presumption they were produced from Shook
23 Hardy. You can answer.

24 A. These logs don't indicate that the
25 location of any of these files referred to in

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Purcell

Exhibit 4 we're calling this, were located at Shook Hardy & Bacon.

Q. Do you know why Cabarrus was not searched?

A. I don't know that it was not searched, sir.

Q. You haven't seen anything that indicates that it was, but you don't know if it was or not, that's what you're saying?

A. That's accurate.

Q. Did you inquire as to what was searched and what was not searched?

A. I didn't inquire as to specific locations.

Q. Do you have the notice in front of you? I've forgotten what number it is. Exhibit 1.

A. Thanks.

Q. Could you go to Page 4.

A. Page 4 of Exhibit A?

Q. Yes, yes, that's correct. Which is question number 2 which is about this document search and if you go to (b) "With respect to each other business location or document storage

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Purcell

A. I'm not aware of any individual who replaced me in that capacity.

Q. Now, you understand that you appear here today on behalf of Philip Morris?

A. Philip Morris, Inc., Philip Morris Companies, Inc.

Q. You just have to say yes.

A. Yes.

Q. And that you have been designated or you consent to give testimony on behalf of Philip Morris today?

A. Yes.

MR. NUNLEY: John, just so the record will be clear, your use of the term Philip Morris is intended to include, Inc. and Companies?

MR. PAYTON: Yes.

Q. Do you understand I'm going to use Philip Morris as the shortened version.

A. Fine.

Q. I appreciate that. You're not an officer or director or managing agent of Philip Morris, are you?

A. I'm not.

Q. So you consented to give the testimony

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1 Purcell
2 on behalf of Philip Morris today?

3 A. Yes, I did.

4 MR. NUNLEY: Off the record.

5 THE VIDEO OPERATOR: Off the record.

6 The time on the screen is 10:30:37.

7 (Discussion off the record.)

8 THE VIDEO OPERATOR: We're back on the
9 record. The time on the screen is 10:31:10.

10 Q. Are you the only person that has been
11 designated to give testimony on behalf of Philip
12 Morris today, or tomorrow?

13 A. As far as I know.

14 Q. You understand you're here to testify
15 as to matters known or reasonably known to Philip
16 Morris in connection with the notice of this
17 deposition?

18 A. Yes.

19 Q. Have you reviewed the notice?

20 A. Yes, I have.

21 Q. Have you ever done this before, by the
22 way?

23 A. No, sir.

24 Q. You've never been deposed or given
25 testimony like you're giving today?

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Purcell

A. I never have.

Q. Let me just hand you, and I guess I want this marked as Defendant's number 1.

MR. NUNLEY: John, do you want to mark it as one or is it not running in serial?

MR. PAYTON: I'd like to mark it, to avoid confusion is to mark it witness number.

MR. NUNLEY: Should it be Purcell number 1?

MR. PAYTON: Yes.

EXB (Purcell Exhibit 1 for identification, notice of deposition.)

Q. You've been handed what's been marked Exhibit number 1 which is the notice of this deposition. You've seen this before?

A. Yes, I have.

Q. Are you familiar with it?

A. Yes, I am.

Q. When did you first see it?

A. I don't specifically recall. It was not too long ago.

Q. In the last week?

A. I would say in the past 14 days.

Q. When did you first learn you'd be

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Purcell

giving this testimony that you've consented to give?

A. I don't remember the date. Sometime in the past month or so.

Q. Did you review the definition section which is the Exhibit A?

A. Yes, I did.

Q. And did you understand the definitions?

A. I believe I do.

Q. Okay. And that goes over to the second page of the exhibit. And then there's a section that's headed "Topics." Did you review the topics?

A. Yes, I did.

Q. And did you understand the topics?

A. Yes.

Q. And are you prepared to give testimony on behalf of Philip Morris understanding the definitions on the topics that are in this notice?

A. Yes, I am.

Q. On all of the topics?

A. Yes, sir.

MR. NUNLEY: Subject to the advice of counsel.

MR. PAYTON: Of course.

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Purcell

1
2 Q. Do you know how you were selected?

3 A. No, sir, I don't.

4 Q. Do you know who selected you?

5 A. I don't know, but I would imagine
6 inhouse counsel, made a suggestion.

7 Q. When did you begin preparing for this
8 deposition?

9 A. You mean preparing as in speaking with
10 our lawyers about what this would be like?

11 Q. I actually mean preparing as in
12 familiarizing yourself with the topics that are
13 listed in the notice so that you could give the
14 answers on behalf of Philip Morris?

15 A. Last Friday.

16 Q. And starting last Friday can you tell
17 me what you did to prepare to give the answers to
18 the questions or to the topics in the notice?

19 A. I met with counsel and we reviewed
20 some --

21 MR. NUNLEY: In giving the answer,
22 don't discuss anything that was discussed between
23 you and counsel either inhouse or outside counsel.
24 You can talk about objective facts, but don't
25 reveal the communications.

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Purcell

A. Okay. I reviewed some materials.

Q. What did you review?

A. Our records management manual, this notice. I reread my affidavit.

Q. What is your affidavit?

A. An affidavit filed in this case.

Q. What did your affidavit relate to?

A. It related to the burden involved in responding to discovery requests.

Q. This was an affidavit that was submitted last year?

A. Yes, sir.

MR. NUNLEY: I would like to go off the record just a second.

THE VIDEO OPERATOR: Going off the record. The time on the screen is 10:37:12.

(Discussion off the record.)

THE VIDEO OPERATOR: We're back on the record. The time on the screen is 10:40:56.

Q. Ms. Purcell, I was asking you the nature of your affidavit that was filed last year and I believe it went to the claimed burden of the then pending discovery requests. This is last -- I've forgotten when you did your affidavit, in the

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Purcell

summer?

MR. NUNLEY: September of --

A. September, yes.

Q. Am I right that that's what your affidavit was about?

A. Yes, sir, and it's Mrs. Purcell, please.

Q. Mrs. Purcell, I'm sorry. What else did you review?

A. Reviewed. There may have been other documents in -- in the past few days we're talking about?

Q. Yes, we are.

A. I took a look at the cover letters that accompanied production that were sent by Mr. Nunley. There may be others.

Q. Are there others and you just don't recall what they are?

A. I can't think of them right now. It's been a busy few days.

Q. The volume of documents you reviewed, I take it, it's not very large?

A. Not very large, no.

Q. Apart from the -- I take it you say the

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Purcell

1 letters that related to production from
2 Mr. Nunley. Do you remember any other letters that
3 related to production, say, a letter from Barbara
4 Robbins?
5

6 A. I didn't see any letters from Barbara
7 Robbins.

8 Q. Lewis Booker?

9 A. I don't recall any from Mr. Booker.

10 Q. Did you review the document request
11 that ABC served, the first document request that
12 ABC served in this case?

13 A. I did not reread them.

14 Q. Did you review any of the transcripts
15 of hearings that related to the document request?

16 A. No, sir.

17 Q. Did you review any of the rulings by
18 the court on ABC's document request and Philip
19 Morris's objections to the document request?

20 A. No, sir.

21 Q. Did you review any certifications by
22 Philip Morris as to the document production they
23 made in response to the document request?

24 A. I didn't specifically read a separate
25 document as a certification, but I understand

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Purcell

Philip Morris has certified that they have met their obligations in this production.

MR. NUNLEY: John, on that point, I think that the documents will speak for themselves.

Q. Apart from the counsel that you met with starting last Friday, apart from them, did you meet with any other persons in connection with preparing for this deposition?

A. No, sir.

Q. Did you have telephone conversations with any other persons besides the lawyers?

A. No, sir.

MR. NUNLEY: Clare, be sure and let him finish his question, please.

Q. Were any documents, or do you know were any documents created for the purpose of helping you prepare for this deposition?

A. I don't know.

Q. You don't recall any memos that were to you?

A. That's correct.

Q. Have you reviewed any of the documents that were produced in this case by Philip Morris in response to the document request?

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Purcell

A. No, sir.

MR. NUNLEY: John, again, just so the record's clear, really the only document request we're now talking about are your first set, correct?

MR. PAYTON: That's correct.

Q. I want to divert for just a second and ask you about your access to certain types of documents at Philip Morris. Have you executed, signed or otherwise been bound by a confidentiality agreement between you and Philip Morris?

A. Yes.

Q. And when was that executed, do you know? Do you remember?

A. I remember signing one when I moved to Richmond.

Q. And that would be years and years ago?

A. No, sir, that was -- it will be three years in October.

Q. Do you have access to trade secret information at Philip Morris?

A. Not that I know of specifically, no.

Q. Do you have access to confidential information at Philip Morris?

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MR. NUNLEY: Well, I don't know --

A. I need to --

MR. NUNLEY: Clare. I don't know, John, whether you're using those terms as they're defined in the protective order or as they're used in common parlance.

Q. In your confidentiality agreement, do you recall whether or not it referred to confidential or trade secret information?

A. I don't specifically recall, no.

Q. You don't recall at all. Do you know what trade secret information is?

A. I have a general understanding of what it is.

Q. Okay. And you believe that you don't have access to trade secret information?

A. To my knowledge, I do not have access to or have seen anything that would be labeled as trade secret.

Q. When I use the term confidential information, does that have a meaning inside Philip Morris?

A. Philip Morris considers all of its records to be confidential in that they are company

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property.

Q. Apart from trade secret information, do you believe you have access to any other information at Philip Morris, all other information?

MR. NUNLEY: Objection as to form.

A. I don't understand the question, I'm sorry.

Q. I'm trying to find out if there is a lesser category of sensitivity, lesser than trade secret, that you also don't have access to at Philip Morris. Do you know?

A. There may be, sir.

Q. You just don't know?

A. I don't know if -- if there are -- I'm sure that there are records that I don't have access to.

Q. Was there any provision made to allow you to have increased access to information or records in connection with you preparing to give this testimony on behalf of Philip Morris today?

A. Could you repeat that question.

Q. Yes. Was there any provision made to allow you to have increased access to information

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or records in connection with the testimony that you are giving today on behalf of Philip Morris?

A. I'm not aware of any, sir.

Q. Would you go to Page 3 of Exhibit A of the notice. It is -- go to Page 3.

MR. NUNLEY: She's there, John.

A. The one that's headed "Topics"?

Q. I'm going to skip topic 1 for right now because I'm coming back to that, and go to topic 2, okay, which starts at the bottom of the page and it is PMC's, Philip Morris's actions in searching for, reviewing, producing and/or withholding documents pursuant to defendant's first set of requests; and I'm going on to A, "With respect to each business location and/or document storage location from which documents have been produced, name, location, the nature of the operations of the location, the identities of the custodians of the documents at the location, the identities of the individuals who conducted the document search and when and how the search was conducted." Did you prepare to answer that question?

A. I can answer generally as to what the company practice is, sir, in answering requests for

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production, but I was not personally involved in every aspect of this production.

Q. Well, I'm asking what Philip Morris did to review or produce or withhold documents at each of the business locations and the document storage locations from which documents have been produced. Can you answer that?

MR. NUNLEY: John, I'd object to that as I'm not sure it's a question. But if it is a question, I think it's wildly overbroad. I think it needs to be broken down into its constituent parts.

MR. PAYTON: I just read it right out of the notice.

MR. NUNLEY: That doesn't mean it's a proper question. It may be -- it's how you drafted your notice. I don't accept that as an appropriate question at a deposition.

Q. You said just a few seconds ago that you could answer generally as to what the company practice is but that you didn't personally, you didn't have a personal involvement in this, every aspect of this production. Do you know and can you testify as to what the company did in connection

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2 with its efforts to search for and produce
3 documents requested in this document request?

4 A. In general, sir, yes.

5 Q. Okay. Can you identify the business
6 locations and document storage locations from which
7 documents have been produced?

8 A. My recollection from reviewing the
9 cover letters that Mr. Nunley sent is that there
10 was -- there were a number of facilities that we
11 produced documents from, which include Park 500,
12 Richmond locations, and I believe we made a
13 production from some New York locations as well.

14 Q. Any other locations?

15 A. I'm not sure.

16 MR. PAYTON: Let me have this marked as
17 Purcell Exhibit 2.

18 EXB (Purcell Exhibit 2 for
19 identification, Defendant American Broadcasting
20 Companies' first set of requests for the production
21 of documents to Plaintiff Philip Morris Companies,
22 Inc.)

23 Q. We've just marked as Exhibit number 2
24 the document request which is Defendant American
25 Broadcasting Companies' first set of requests for

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the production of documents to plaintiff Philip Morris Companies, Inc. Do you see that in front of you?

A. Yes, I do.

Q. Do I understand that you have not seen this before?

MR. NUNLEY: That is incorrect.

A. No, I didn't say that, sir.

Q. You have seen this before?

A. Yes, sir.

Q. When did you first see this?

A. Sometime last year.

Q. You saw it -- I see. Do you remember if you read it or reviewed it last year?

A. I reviewed it prior to signing that affidavit certainly.

Q. But am I right in recalling that you testified that this was not a document you reviewed in preparing for this deposition today?

A. That's true.

Q. Let me ask you to turn to Page 12 and take a look at request 19 and let me just ask that you read request 19 just to yourself. I don't want to read it in. So you understand what it says.

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Okay. Let me just represent to you and I will put in a document to establish this, but I don't think there's going to be an issue here, that the status of this request 19 is that the judge has ordered, and I'm just going to read off his order, that "Philip Morris shall produce all responsive documents to the extent they relate to nicotine containing substances other than unprocessed leaf tobacco. The time scope for this request is January 1, 1962 to March 24, 1994." Are you familiar with Philip Morris's manufacturing operations?

A. Somewhat, yes.

Q. Do you know, would you agree that nicotine containing materials are going to be present at every Philip Morris manufacturing operation?

MR. NUNLEY: John, by that do you mean nicotine containing materials to include tobacco products?

MR. PAYTON: I will exclude unprocessed leaf tobacco, yes, but I do include tobacco products.

MR. MURPHY: Raw leaf as purchased from

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2 the field you're excluding?

3 MR. PAYTON: I'm excluding, yes.

4 A. So we're talking about --

5 Q. Everything but raw leaf, unprocessed
6 leaf tobacco. Everything but unprocessed leaf
7 tobacco. Would you agree, with the exception of
8 unprocessed leaf tobacco, that every Philip Morris
9 manufacturing operation has some nicotine
10 containing substance present on site?

11 MR. NUNLEY: You mean documents?

12 MR. PAYTON: No.

13 A. Insofar as we're in the business of
14 making cigarettes, I think the answer to that is
15 yes.

16 Q. And would you agree that there are at
17 every one of those manufacturing operations
18 documents that relate to nicotine or nicotine
19 containing substances, those nicotine containing
20 substances that are present?

21 MR. NUNLEY: John, so the record is
22 clear, and you're including in that definition
23 cigarettes?

24 MR. PAYTON: Yes.

25 A. Then yes, there are documents related

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to our product almost certainly in every manufacturing location.

Q. Okay. And there are documents that relate to nicotine containing substances at those manufacturing operations?

MR. NUNLEY: Objection.

Q. Other than unprocessed leaf tobacco?

MR. NUNLEY: Objection; asked and answered. I think it's the same question.

Q. You can answer.

A. I think I did answer, sir.

Q. But you can answer again.

A. Well then I would say I believe the answer to be yes.

Q. And how many manufacturing operations does Philip Morris have, do you know?

A. Worldwide?

Q. In the United States?

A. In the United States I'm familiar with three.

Q. And where are they?

A. Richmond, Virginia, Louisville, Kentucky and Cabarrus, North Carolina.

MR. NUNLEY: John, we ask you what is

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2 your intention with respect to breaks? Do you have
3 scheduled breaks? Do you want us to ask?

4 MR. PAYTON: I'm very flexible. The
5 tape lasts two hours. We can take a five minute
6 break if it's convenient and 10, 15 come back on, I
7 think we have another hour of tape then.

8 MR. NUNLEY: Is your intention then to
9 finish the tape, take lunch and come back?

10 MR. PAYTON: Yes, something like that.

11 MR. NUNLEY: That's fine. This is
12 halfway through.

13 MR. PAYTON: You want to break right
14 now?

15 MR. NUNLEY: I'm in no hurry to break
16 right now. I just wanted to know what the schedule
17 was.

18 MR. PAYTON: We can break now, come
19 back and finish off the tape.

20 THE VIDEO OPERATOR: We're going off
21 the record. The time on the screen is 11:03.

22 (A recess was taken.)

23 THE VIDEO OPERATOR: We're back on the
24 record. The time on the screen is 11:13:22.

25 Q. Did you consult with counsel at the

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break?

A. Somewhat, yes.

Q. You identified three manufacturing facilities in the United States, Richmond, Louisville and Cabarrus?

A. Yes?

MR. NUNLEY: Cabarrus.

Q. Cabarrus. Are you familiar with Ashland, Virginia?

A. The location, sir?

Q. Yes.

A. Yes.

Q. And do you know that Philip Morris has a facility there?

A. I believe we have some personnel working on a project in Ashland, yes.

Q. Do you know what that facility does?

MR. NUNLEY: Objection. I think that calls for an inquiry into a matter the judge has ruled out of the case, and that is future projects, ongoing projects for future products. I think that was covered by the opinion he issued yesterday.

MR. PAYTON: I don't understand your position here. I want to know why that facility

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wasn't searched a year ago, six months ago, two months ago in connection with document requests. What he ruled yesterday on I understand goes to whether it was searched or not. If it was searched it was searched. If there are documents responsive, there are documents responsive.

Q. I want to know if you know what happens to that facility and whether or not you know if there are documents that are responsive. That's what I want to ask her.

MR. NUNLEY: I think you can ask her whether or not it was searched.

MR. PAYTON: That's what I intend to do. I want to know if she knows what the facility is and whether or not it contains documents that are responsive.

Q. Do you know?

MR. NUNLEY: I'll tell you, John, I think you're doing so in direct contravention of what the judge has said and that is this area is not in the case. If you want to do that, I'm not going to stop you.

MR. PAYTON: Okay.

MR. NUNLEY: I will refer you to the

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order, though.

MR. PAYTON: I still don't understand your position. If in fact you searched or didn't search that facility clearly I'm entitled to know that. Now you can say that's why you didn't, that you anticipated that the judge was going to rule yesterday that it was not in the case, but I can inquire as to whether or not you searched or didn't search that facility.

MR. NUNLEY: I don't think that question has been asked. I thought what you asked her is what goes on at that facility.

MR. PAYTON: That's right, I did. I asked to see if she knows what goes on at the facility.

MR. NUNLEY: Why don't you ask the question whether or not it's searched and perhaps given the answer to that question you need not go any further.

Q. Did Philip Morris conduct any search of documents contained at its Ashland facility in response to the document request in this case?

A. I don't know, sir.

Q. Did Philip Morris conduct any search of

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the documents contained at its Louisville facility
in connection with the document request in this
case?

A. I don't know, sir.

Q. Did Philip Morris conduct any search of
the documents contained at its Cabarrus facility in
connection with the document request at issue in
this case?

A. I don't know if that specific facility
was searched, sir.

Q. Do you know if Philip Morris searched
its New York facility, headquarters?

A. Yes, sir.

Q. In connection with document requests at
issue in this case?

A. Yes, sir.

Q. And they did?

A. Yes.

Q. You did, okay.

MR. NUNLEY: John, you asked two
questions there, they did, you did. Are you
asking --

Q. Philip Morris did?

A. Philip Morris did, sir.

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MR. PAYTON: I used the you as though she were Philip Morris, that's why I changed it.

Q. Does Philip Morris have document warehouses or other locations at which it keeps documents besides its manufacturing facilities and its corporate headquarters?

A. There are a number of contract facilities where stored files are kept.

Q. Okay. And how many of those are there?

A. I don't know if I know the exact number. There are quite a few.

Q. How many is quite a few?

A. There may be more than I specifically have knowledge of. I'm familiar with the facility in New York.

Q. What other contract facilities does Philip Morris keep documents at?

A. I understand there's off-site storage for some Richmond records.

Q. Do you know where that is?

A. No. It's in the general Richmond area, though.

Q. Okay.

A. I'm also familiar with off-site storage

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for our vital records.

Q. What are vital records?

A. Vital records are defined in our records management program as records that are necessary to have in the event of a disaster that would help reconstruct the financial or operational functions of the company.

Q. And where are the vital records stored?

A. They're stored at a location called Iron Mountain. That is either in New York State or Pennsylvania, I don't recall at the moment.

Q. And are there other locations where Philip Morris keeps records, not its own facilities?

A. There may be other leased facilities, sir.

Q. Now, with regard to the -- there's an off-site facility in New York that you mentioned as the first one, okay. Does that have a name?

A. It's in Carlstadt, New Jersey. We refer to it as the Carlstadt ^{warehouse.} ~~facility.~~

Q. ^{Did Philip Morris search its Carlstadt facility} For documents responsive to the document request in this case?

A. I believe so.

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Q. And did Philip Morris search its Richmond off-site facility in connection with the document request at issue?

A. I believe some Richmond facilities were searched, yes.

Q. I didn't mean the Richmond facilities. I mean the off-site facility that you described.

A. I'm certain that some of the files were produced from stored files.

Q. How do you know that?

A. My office in Richmond is with the legal department and the patent group is basically who I sit with, so I know that many of their files are stored off site.

Q. So you knew that just from your personal knowledge in your position at Philip Morris?

A. Yes.

Q. Now, the vital records which are kept at Iron Mountain, New York and/or Iron Mountain, Pennsylvania, do you know if Philip Morris searched either one of those sites for documents that would be responsive to the document request at issue here?

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2 A. I don't know, sir.

3 Q. And do you know if Philip Morris
4 searched any other off-site or contract facilities
5 for documents that would be responsive to the
6 document request at issue here?

7 A. I don't know of any other specific
8 off-site Philip Morris locations that were searched
9 or leased facilities.

10 Q. Do you know if any -- do you know what
11 the Shook Hardy law firm is?

12 A. Yes, sir.

13 Q. What is it?

14 A. They're outside counsel for Philip
15 Morris.

16 Q. Do they also have Philip Morris
17 documents that Philip Morris stores there, do you
18 know?

19 A. They have documents that have been
20 collected from Philip Morris, yes. We do not store
21 them there.

22 Q. Do you know if Shook Hardy's files were
23 searched in connection with the document request at
24 issue in this case?

25 MR. NUNLEY: John, I'd object to the

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characterization of those files as Shook Hardy's files.

Q. Do you know if any files that are in Shook Hardy's possession were searched for documents responsive to the document request at issue in this case?

MR. NUNLEY: Objection as to form. You may answer.

A. Could you please run that question by me again.

Q. Yes. Did Philip Morris search or have searched any files, its files or otherwise that are or were in the possession of Shook Hardy in connection with the document request at issue in this case?

MR. NUNLEY: Objection as to form. You can answer it.

A. I am aware that copies of Philip Morris records that are held at Shook Hardy were reviewed for this case.

Q. Well, apart from Philip Morris facilities, Philip Morris leased or contract facilities, such as the off-site storage, and Shook Hardy, did Philip Morris search or have searched

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any other files for documents responsive to the document request at issue here?

MR. NUNLEY: Objection as to form. You can answer.

A. I'm not aware of any specific locations in addition to those that we've already mentioned.

Q. Are you aware that there were other searches, however?

A. I don't think I understand the question.

Q. You're not aware of -- you say Philip Morris did not -- you don't know any other specific locations that were searched; is that what you're saying?

A. That's correct --

MR. NUNLEY: Other -- excuse me.

A. That's correct.

Q. Do you know if there were other locations that were searched, though, and you just don't remember what they are?

A. I'm not aware of any others.

Q. Okay. Did Philip Morris search or have searched any files that are maintained outside the United States in connection with the document

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requests in this case?

A. I believe so, yes.

Q. What files were those?

A. I believe there was a review of research related files.

Q. Where are those files maintained?

A. I'm not sure.

Q. But not in the United States?

A. My understanding -- I can speak to you generally about where we have research facilities.

Q. Okay.

A. Would that help?

Q. Where does Philip Morris have research facilities?

A. Philip Morris, Inc.'s main research facility is in Richmond, Virginia. There is a research facility in Neuchatel, Switzerland and there is some research conducted at two other locations in Germany and in Belgium.

Q. Did Philip Morris search its files in Neuchatel, Switzerland, in connection with the document request in this case?

A. I believe so.

Q. And did Philip Morris search its files

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or have searched its files at its research facility in Germany?

A. I don't know that it is our research facility, sir. I'm not sure what the relationship is.

Q. Do you know the name of the facility in Germany?

A. INBIFO, I-N-B-I-F-O, which stands for something in German that I can't pronounce.

Q. Do you know if a search of files held at INBIFO was undertaken in connection with the document request at issue in this case?

A. I believe so, sir.

Q. And do you know the name of the research facility in Belgium?

A. It's referred to as CRC.

Q. And do you know if Philip Morris caused to be searched files at CRC in connection with the document request at issue in this case?

A. I believe so, sir.

Q. And the research facility in Richmond, did Philip Morris search that facility for documents responsive to the document request in this case?

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A. Yes, sir.

Q. Who was responsible for coordinating these document requests?

MR. NUNLEY: John, I'd ask for a clarification. How do you mean for coordinating?

Q. Who was responsible for seeing that these locations were searched for documents responsive to the document request?

A. I think I can answer that by saying that most document requests are responded to within the company by cooperation between inhouse personnel and outside counsel.

Q. That's in general?

A. In general.

Q. Who did it in this case?

A. I believe a combination of inhouse personnel and outside counsel also coordinated this production.

Q. And who were the inhouse personnel?

A. It may be any number of personnel. It depends on what we mean by coordinating or contributing to the effort.

Q. Okay.

A. What do you mean?

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Q. I mean both of those things. I want to go down the list of names.

A. I'm not sure I can list everyone. I'm sure I can't list everyone. In fact, this production effort in Richmond alone has involved a vast number of individual company employees.

Q. I'm trying to figure out who's at the top. When I said coordinated, I want to know who it is that has, you know, major responsibility or primary responsibility for coordinating this effort?

A. I think throughout the company on litigation matters we generally refer to the legal department.

Q. Who did it in this case?

A. Do you mean what's the name of the individual ^{attorney} ~~in legal~~ responsible for this case?

Q. That's right.

A. I have worked most often with John Mulderig, M-u-l-d-e-r-i-g.

Q. And in this case was he responsible, or do you know?

A. I don't know.

Q. You don't know who was responsible?

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A. I don't know if there is any one person who was responsible.

Q. Do you know if it was a collection of persons?

A. It may have been.

MR. NUNLEY: John, I think she's testified that it was a collection of or collaborative effort between inhouse and outside counsel.

MR. PAYTON: I heard that and I'm trying to identify who the inhouse counsel persons were that did this.

Q. Do you know?

A. I'm most familiar with Mr. Mulderig and his role.

Q. And did he play a role in this or that's just in general you know about his responsibilities? Did he play a role in this case?

A. I'm sure he did, yes.

Q. You don't know?

A. No, I am sure that he played a role coordinating with outside counsel in this case, yes.

Q. Are you aware of anyone else inhouse

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who played a role in coordinating the efforts to produce the documents and review the files in this case?

MR. NUNLEY: John, I'm going to object to that for this reason: I think you know if you've reviewed our responses and identified -- in which we've identified people from whom documents were collected, that the number is enormous and in terms of coordinating, I don't know what level of coordination you want. If there are three people in a department and one person headed that effort up, if that's being considered, if you're asking for the name of that person as a coordinator. So on that basis I think the question is overbroad. I don't know that it can be answered.

Q. I want to know who's at the top. I'm not asking for the entire list of names. I want to know who's at the top.

MR. NUNLEY: And in response to that she's answered it's a collaborative effort between inhouse and outside counsel.

Q. You have listed one name. Are there other individuals that you're aware of who played a role at the top in coordinating this?

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MR. NUNLEY: Objection as to form.

A. I don't know what you mean by at the top. Do you mean are there other legal department personnel?

Q. No. I mean are there other personnel who played a coordinating role in this document review and search? Mr. Mulderig, I'm sure I mispronounced his name, are there other people at his level who ^{also} ~~else~~ helped coordinate this effort?

A. I don't know what specific role others may have played.

Q. Do I remember correctly that you did not discuss with Mr. Mulderig what he did or didn't do in connection with the document production and in preparation for the deposition today?

MR. NUNLEY: I object to that. I think it necessarily involves attorney/client communications.

MR. PAYTON: I don't think it does. I asked her who she talked to. I'm simply asking if she talked to him.

Q. Did you talk to him?

A. I spoke to him over the past few days, yes.

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Q. About these subjects?

MR. NUNLEY: Objection as to what was discussed. That is attorney/client privilege.

MR. PAYTON: I'll tell you what I want to know and I think it's not objectionable.

Q. Whether or not you spoke to Mr. Mulderig in preparation for your testimony on these subjects here today, yes or no?

MR. NUNLEY: That's a different question. You can answer that question.

A. Yes.

Q. From Friday to today, those are the days in which you were getting ready to testify, do you have any rough estimate of how many hours you spent thinking about or reviewing or talking about your testimony?

A. The time I spent focusing on preparing for this, most of the afternoon Friday, the better part of Monday, Tuesday and Wednesday.

Q. What are the nature of the manufacturing facilities that Philip Morris has here in Richmond?

A. If I understand your question correctly, I think I can answer by telling you that

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2 the manufacturing facilities here in Richmond all
3 ultimately produce cigarettes.

4 Q. Okay. And do you know how many
5 different facilities there are in the Richmond
6 area?

7 MR. NUNLEY: Manufacturing facilities,
8 John?

9 MR. PAYTON: Philip Morris facilities.

10 A. No, I don't know the exact number.

11 Q. Do you know how many different
12 manufacturing facilities there are in the Richmond
13 area?

14 A. No.

15 Q. Do you know or can you tell me which of
16 the facilities in the Richmond area were searched
17 for documents responsive to the document request?

18 A. I know that the Park 500 facility was
19 searched. I know that our operation center was
20 searched. I know that our main R&D facility was
21 searched. And there may be other locations that
22 were searched.

23 MR. NUNLEY: And John, on that point, I
24 would say that going back to the point of the scope
25 of this production, we have endeavored to identify

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for you where documents came from. If you have questions about that on a log we'll be happy to sit down with you and help you identify from what areas those came from. I think that's an offer we've made before, made before the deposition.

Q. Do you know if there were any Richmond facilities that weren't searched?

A. I don't know that, sir.

Q. You don't know one way or another, or are you saying that they were all searched?

A. I don't know.

Q. Do you know if any of Philip Morris's primary facilities in Richmond were searched for documents responsive to the document request?

A. I believe so, sir.

MR. NUNLEY: John, I take it you're using primary as we use it, as Philip Morris uses it? You need to say yes so she can get it.

MR. PAYTON: Yes.

Q. Do you know what the Westab Annex is?

A. No, sir.

Q. Do you know what expanded tobacco is?

A. I have a general knowledge of what it is, sir.

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Q. Do you know what Liggett expanded tobacco is?

A. I'm sorry, could you repeat that.

Q. Do you know what Liggett, ~~L-i-g-g-e-t-t,~~
~~L-i-g-g-e-t-t,~~ expanded tobacco is?

A. No, sir.

MR. NUNLEY: John, I don't know how far you plan to go with this, but I think that's outside the scope of your notice.

MR. PAYTON: I was trying to identify what happens at a facility I just asked her about to see if that refreshed her recollection. Those two are linked.

MR. NUNLEY: The Westab Annex and --

MR. PAYTON: Yes.

Q. That doesn't refresh your recollection, Westab Annex and Liggett expanded tobacco?

A. No, sir.

Q. Did Philip Morris decide to not search certain of its manufacturing facilities in connection with this document request?

MR. NUNLEY: John, I object to that, Decisions as where to search. As she's told you, this search was coordinated by inhouse and outside

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counsel. Decisions where not to search necessarily implicate attorney/client and/or work product. I think you can ask the witness facilities that were searched and facilities that were not searched. That gives you the information that you need. But if you ask the question the way you just did, it is objectionable.

MR. PAYTON: I don't understand that. All I want to know is did Philip Morris decide to not search a facility.

MR. NUNLEY: And again, I told you my position.

MR. PAYTON: You're going to tell her not to answer that?

MR. NUNLEY: Yes, yes.

MR. PAYTON: Go ahead, instruct her not to answer.

Q. Did Philip Morris decide to not search certain of its facilities in connection with the document request in this case?

MR. NUNLEY: Clare, as I've told you, I think there's ways to get at the information Mr. Payton would like, but I think the way he's doing it is inappropriate. I think it implicates

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the attorney/client and the work product privileges and I'll instruct you as your counsel not to answer.

Q. And you're testifying as Philip Morris so I have to ask you if you are accepting his instruction and therefore declining to answer my question?

A. Yes, I decline to answer the question.

MR. PAYTON: Let me have this marked as the next exhibit.

EXB (Purcell Exhibit 3 for identification, document.)

MR. NUNLEY: John, before you ask about this document, I think it contains attorney/client -- excuse me, I think it contains work product privilege. It's the first that I've become aware that it's been produced. I believe under the protective order there is a, I believe, a nonwaiver provision and I would invoke that provision on the basis of the note on this document.

MR. PAYTON: This is a document that was selected by us for copying, was reviewed by you and withheld and then reviewed by you and

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produced. This was reviewed twice and we now have it. This is part of the alternative production that was rereviewed by you and given to us.

MR. NUNLEY: And I'm telling you that the note that is -- what appears to be a note that's on the photocopy you've handed me contains work product information and under the protective order I think it's appropriate to request that it be returned.

MR. PAYTON: Is this your handwriting?

MR. NUNLEY: I'm not going to answer the question.

MR. PAYTON: Let me ask a more general question. Do you recognize that as a note written by a lawyer? Because if it's not, I don't think it's work product at all.

MR. NUNLEY: I can't tell you whether that's responded -- whether that's on there by a lawyer or not. I would assume it's on there by a lawyer.

MR. PAYTON: But you don't know?

MR. NUNLEY: It's my assumption that it is. I cannot tell you with absolute certainty that it is. But I can tell you that based on it I think

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my belief is such that I believe I have a good faith effort to ask that it be returned under the protective order. If I learn that it's not work product, then I'll provide it to you.

Q. Did Philip Morris exclude from its search for documents responsive to this document request its Cabarrus facility?

A. I don't know that, sir.

MR. PAYTON: Are you willing to answer that, Mr. Nunley?

MR. NUNLEY: I don't believe I'm noticed for deposition.

MR. PAYTON: I know you're not.

MR. NUNLEY: John, we've agreed to make and have made ourselves available to you in Washington on numerous occasions. I'll be happy to do the same thing. I don't think it's appropriate to take it up in the course of the deposition.

I've also told you both I think at the beginning of the week and again yesterday, that if there are matters related to particularly paragraph 2 of this deposition that you want to go into, that we're prepared to do that on a lawyer-to-lawyer, meet-and-confer basis.

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Q. Did Philip Morris exclude from its search for documents responsive to this document request its Louisville facility?

A. I don't know, sir.

Q. I'm going to switch subjects for just a second here and ask about how Philip Morris keeps track of documents.

MR. NUNLEY: Are we finished with two?

MR. PAYTON: We're not.

MR. NUNLEY: Or are you just shifting off?

MR. PAYTON: I'm just shifting off. I think it's going to come back to two.

Q. I want to ask a few questions about how Philip Morris keeps track of documents. So let me begin by asking you this: I have seen documents that Philip Morris has produced that have at the bottom of the document something like key words and then there's a string of key words. Have you seen documents like that? Are you familiar with documents like that?

A. I may have seen some, sir.

Q. Okay. Is there a system by which documents are sort of indexed according to key

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words?

A. There is a policy, our records management policy that groups documents by category for the purposes of a retention schedule. Some departments may have procedures whereby they list that category on the document.

Q. Okay. And then how are the documents -- actually, could you just describe then how your document retention policy works, just in general.

A. Yes. In general, there's a manual that describes the policy and the procedures. It provides to each functional area of the company a specific schedule and on the schedule are records categories and the schedule will determine what the period is, retention period for that category of records.

Q. Okay. And the documents are kept at the facility that generated the documents?

A. They may be stored on site. They may be stored off site. The retention schedule itself provides for how much time they would be stored on site and how much time they would be stored off site or in storage a facility.

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Q. I've seen references to central files. Is there a central file at various facilities or at various locations at various facilities?

A. There may be areas referred to as central files in any number of places throughout the company. I am familiar with a central file called that in the R&D facility.

Q. But it may just be the R&D central file, is that what you just said?

A. That's the one I'm specifically familiar with.

Q. Is there a central file to which some selection of documents are sent from all locations in the company?

MR. NUNLEY: Object to the form.

Q. Did you understand that?

A. No, sir, I'm sorry.

Q. Is there a master central file that certain documents are sent to from all over the company's various locations?

MR. NUNLEY: Same objection.

A. I'm not aware of any one location that files from various parts of the company would be sent to for any purposes other than storage.

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2 Q. Okay. So apart from storage, central
3 files will be location specific, R&D central files,
4 for example?

5 A. I believe so.

6 Q. Does Philip Morris keep documents in
7 forms other than hard copy, paper?

8 A. Yes, sir.

9 Q. What forms?

10 A. Any number of forms. Microfiche,
11 electronic records, any form that records can be
12 kept in probably.

13 Q. And some documents I take it will be in
14 one or more or all of those forms; is that right?

15 MR. NUNLEY: Objection as to form.

16 A. It's possible that a document could be
17 in any form.

18 Q. And that we could have a hard copy of a
19 document and for that same document we could have a
20 microfiche of that document and for that same
21 document we could have a scanned-in version of that
22 document?

23 MR. NUNLEY: Objection as to form;
24 compound.

25 Q. Is that right?

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A. It's possible that a document may have copies in other formats.

Q. When I asked about the central files, I was asking about hard copy, paper copy. If you were giving answers about all of those things I guess I want to know, so I'm going to ask you about the other means of storing information. Is microfiche stored in a central location or is it also stored, you know, facility by facility?

A. Microfiche is a pretty common way of storing files and it's probably in use in a number of our facilities.

Q. And electronic storage means, what different types of electronic storage does Philip Morris use?

A. Electronic, you mean on-line storage?

Q. I mean if there are documents that are in electronic databases, computer databases that have been scanned in, documents have been scanned in?

A. They may be stored in a database. They may be stored on a backup tape. There may be some other formats. I'm not technologically sophisticated enough to explain them.

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Q. Is there a --

MR. NUNLEY: John, just so the record is clear, I think your question, at least as I understand it, you can have an electronic database without having a scanning system. I think that your question suggests that maybe they're one and the same. And I don't believe so.

MR. PAYTON: No, I didn't intend to do that.

Q. I wanted to identify different nonpaper versions of documents that Philip Morris may use. So let's set aside paper which I'm calling hard copy.

We could have a document that would be in a Word Perfect file in a hard disk, right, Philip Morris uses that?

A. We may use that, yes.

Q. Does Philip Morris also on occasion scan documents into a document scanner and have it in digital form?

A. I'm familiar with one location where there is a scanner, but I don't know what specifically they scan or do with the documents there.

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Q. Where is that?

A. There is a scanner in Richmond.

Q. At what facility?

A. I believe it's located in the R&D facility.

Q. Are there other means of preserving documents that Philip Morris uses?

A. I don't know that we qualified this as a method for preserving documents.

Q. A form in which Philip Morris has documents?

A. Not that I can think of.

Q. Philip Morris has an electronic mail system?

A. We have several, sir.

Q. There are multiple electronic mail systems?

A. Yes, there are.

Q. And by that do you mean that some locations have one system for electronic mail and some have another system, or are there two different electronic mail systems at any one location?

MR. NUNLEY: Objection as to form. You

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can answer.

A. There may be in place a number of different mail systems on any one particular computer terminal.

Q. All internal?

A. I'm sorry, I don't understand that.

Q. Those would be internal electronic mail systems?

A. Meaning?

Q. That it would be available for communications from someone within the company to someone within the company only?

A. I believe some of them may have links to the outside.

Q. And are electronic mail messages stored? Are they part of the document retention policy?

A. All company records are part of the document retention policy.

Q. Okay.

A. But we encourage people in the course of training to print out any substantive records, make them into hard copies and retain them in their files.

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Q. What is Philip Morris's document retention policy with respect to electronic mail messages?

MR. NUNLEY: How do you mean, John? You mean the length of time?

MR. PAYTON: Yes.

A. The policy doesn't differ as to the media.

Q. What's the policy?

A. The policy overall is that records are to be retained for the appropriate length of time. You would refer to your schedule. If you have a substantive electronic mail record it should be kept for the amount of time listed on your schedule.

Q. Okay. Just take that example that you just used. Do you know the length of time?

MR. NUNLEY: I don't think you can tell from that schedule.

A. No, sir. The categories are not broken out by format. So you don't have a separate category for electronic mail. That would be functionally useless in a program.

Q. What's the shortest amount of time?

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A. For any record?

Q. Yes.

A. Any record that's retained there are some reference materials that are only in use while they're active. The general -- the general retention period for most administrative records is C plus 1 or C plus 2. That means current year plus an additional one or two years.

Q. So do I understand this correctly that an electronic mail message that's substantive that is received today should be kept for the rest of this year plus one, is that C plus 1?

A. Depending on the subject matter, sir.

Q. And does that mean kept in electronic form for C plus 1 or in any form for C plus 1?

A. In any form. We don't specify how long to keep things electronically. Some people find it more convenient to leave things on the computer. I prefer and encourage them in the course of training to print them out.

Q. What happens at the end of the period? We're at C plus 1 and it is C plus -- let's assume it's C plus 1 that applies to this record and we're at the end of that time period. What is to happen

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next?

A. According to the policy, when the applicable time period has run the individual responsible for those files should review them to see that they are not subject to what we call a disposal suspension, meaning a you can't throw it away notice. If they are not subject to any further requirements or business needs within the department or disposal suspension notice, then they can be disposed of.

Q. So when an employee is supposed to proceed is once you get to whatever the time period is, and for the purposes of this I'm just going to say C plus 1, you would then check to see whether or not there is a disposal suspension notice that would cover the document or record in question and if there is no disposal suspension notice you could dispose of the document?

A. That's almost completely accurate.

Q. What did I miss?

A. As part of the disposal suspension notice we have something referred to as appendix A in the manual which encompassed at the time this manual was prepared all of the disposal notices in

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place at that time.

Q. I see. So you could actually look up in the manual the then existing disposal suspension notices?

A. The currently existing disposal suspension notices you would compare them to your topic or subject matter in the document or the record and you would check it against appendix A.

Q. Now, in dealing with litigation and discovery matters, documents, is there as just a routine matter, I'm not talking about this case, but as a routine matter is there a disposal suspension order that would come out that would cover any documents that were then in the middle of litigation?

MR. NUNLEY: Object to form. I think it's a little bit vague, John.

Q. I'm just trying to understand the interplay between litigation and discovery and documents and the document retention policy.

MR. NUNLEY: I don't think that's a question. I'm not trying to knock you off this --

Q. I'm talking about a subject matter. Do you understand my subject matter here?

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A. I can describe the ~~policy~~ to you.

Q. Go ahead.

A. In accordance with the policy, the legal department or the tax department are authorized to issue what we call disposal suspension notices. They would issue a notice if they wanted to preserve records, and that notice is distributed to the records coordinators. It's a term I haven't used for you before and I can explain that if you'd like.

Q. Yes, please.

A. The records coordinators are the people trained within the company in separate functional areas to implement the program. Those records coordinators then share that disposal suspension notice with everyone ^{with} in their functional group so that it effectively reaches every member of the Philip Morris Company, or every employee.

Q. Okay. And if we just took a facility, Park 500, inside of Park 500 I take it there would be numerous records facilitators? What's the phrase you're using?

A. Records coordinators?

Q. Yes, records coordinators.

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A. I don't know how many there may be at Park 500.

Q. Would there be more than one there?

A. There could be.

Q. But there could be just one?

A. There could be, yes.

Q. Now just as a matter of general practice, when litigation is -- let me strike that. When discovery requests or document requests are received by Philip Morris and that comes to the attention of the legal department, what's the general practice regarding the receipt of such a document request and the issuance of any document -- I'm going to screw up these terms.

MR. NUNLEY: Disposal suspension notice.

Q. Document disposal suspension notice?

A. Document suspension disposal notice. The legal department would review any incoming request for production, possibly discuss it with outside counsel and probably try to come up with some idea ^{of} what records we were talking about. It's then entirely up to the legal department to decide on how to word and when to issue the disposal

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suspension notice.

Q. And with regard to the document request at issue in this case, document request number 1 in this case, was a document disposal suspension notice issued by the legal department?

A. Yes, sir.

Q. And do you know when that was?

A. I believe it's in September of '94.

Q. And is it still in effect?

A. Yes, sir.

Q. Are document searches for Philip Morris documents coordinated through the records coordinators?

A. They can be.

Q. Who else would they be coordinated through?

A. If you're talking about lower level coordination?

Q. Yes.

A. I think you may use that term to refer to any individual in the company who may have some knowledge about the topics or whose records we may want to search.

Q. Do you know if in this case the search

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for documents responsive to the document request number 1 was coordinated through records coordinators?

A. I don't believe it was coordinated solely through records coordinators, if at all.

Q. It may have made use of, that is the document search, of some records coordinators, but you don't know?

A. It may have.

Q. When Philip Morris collects documents because of a document request received in the course of litigation, and either just collects them and produces some subset of those, does that collection of documents get preserved, retained by Philip Morris?

MR. NUNLEY: Objection as to form.

Q. Did you understand what I'm describing here?

A. I think I can describe the process that I'm familiar with.

Q. Fine.

A. If files are collected and copied by inhouse or outside attorneys in connection with litigation, they're generally marked with a C, with

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a Bates number, with some -- they're physically marked. So that when they're returned to the originator of the file they're marked and identified as records that cannot be disposed of.

Does that answer your question?

Q. Yes. They are not maintained as a separate set of documents once the litigation is over, they're returned to the original file, is that what I understood you to say?

A. Active files are returned as promptly as possible to the originator.

Q. Those are the originals?

A. Or the owners of the files. Yes, all of the originals are returned from counsel after the copying process.

Q. Is a set of copies kept in one place?

A. Not that I'm aware of.

Q. Now, you said that in the course of collecting these documents and the procedure you described, they would be marked with a C and Bates stamped?

A. It could be either. There could be some other indication.

Q. Does the C have any significance? Does

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it mean something?

A. I think it means copied.

Q. So it could have, you know, a Bates number or a C with a number after it, I guess?

A. It could.

Q. I've seen a document which I could get to show you but I think we'd all rather not show it to you, a document that has no Bates number or C number on it but it has a stamp that says attorney work product, just a little stamp on it that says that. Are you familiar with that stamp and those circumstances? There's no C or Bates number?

MR. NUNLEY: John, I really have to -- I think that's --

MR. PAYTON: It's a red document.

MR. NUNLEY: That's extremely vague. You can answer, Clare, if you can.

A. I'm not sure how to answer.

Q. Have you seen a document that says attorney work product, just a little stamp on it?

A. I don't recall any document that had that stamp.

Q. By the way, the document that's marked, I believe, number 3 in front of you now?

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MR. PAYTON: Is that marked number 3?

THE REPORTER: Yes.

Q. Have you seen that document before?

A. No, sir.

Q. Either part of that document, the little thing in the center, have you seen that before?

A. I don't recall ever seeing that, no. By the other part I assume you're referring to this little white box?

Q. The little note, you haven't seen that either?

A. I don't recall ever seeing that, sir.

Q. You've referred throughout this last section of your testimony to a policy manual; is that right?

A. Yes, sir.

Q. What's the title of the policy manual?

A. The policy manual that I'm referring to is I believe entitled the Philip Morris U.S.A. records management manual. There is, however, a manual available for other operating companies or *the* holding company.

Q. Similar manual?

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A. Substantially similar, yes.

Q. Did you review this manual in connection with preparing for your testimony today?

A. Yes, I did.

MR. PAYTON: I think I might as well stop, I have about three minutes left.

THE VIDEO OPERATOR: We're going off the record. This is the end of videotape number 1. The time on the screen is 12:19:09.

(Luncheon recess: 12:19 p.m.)

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